

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

FILED

JUL 18 2002

No. 5:00-CV-703-F2

DAVID MICHAEL OLIVER  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE )  
UNIVERSITY and CREE, INC., )  
Plaintiffs, )  
 )  
v. )  
 )  
NICHIA CORPORATION and )  
NICHIA AMERICA CORPORATION, )  
Defendants. )

ORDER

NICHIA CORPORATION and )  
NICHIA AMERICA CORPORATION, )  
Counterclaimants, )  
 )  
v. )  
 )  
NORTH CAROLINA STATE )  
UNIVERSITY; CREE, INC.; and )  
SHUJI NAKAMURA, )  
Counterclaim- )  
defendants. )

EXHIBIT 26, p. 172

During the July 1, 2002 hearing in this matter, the undersigned directed Nichia counsel, Mark A. Grant, to file with the court his affidavit memorializing his acknowledgment, upon direct inquiry by the court, of his knowledge concerning publication over the Internet of the undersigned's letter of March 15, 2002 to Assistant United States Attorney Peter W. Kellen, and to provide his sworn statement detailing his understanding, as proffered in open court, that the letter was a "public document." To date, Mr. Grant has not done so. Mr. Grant hereby is ORDERED to file the above-described affidavit in Wilmington before the close of business on **July 31, 2002**.

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Furthermore, during the July 1<sup>st</sup> hearing, the undersigned directed counsel for Nichia to cause the attorney responsible for the contents of DE # 166 – other than local counsel -- to file his or her affidavit certifying the contents of that document under the requirements of Rule 11, FED. R. CIV. P. The court was (and remains) particularly concerned by Nichia's allegations in DE #166 of ethical violations by Cree's counsel. Local counsel for Nichia explained at the hearing that a supplemental motion had been filed subsequent to DE #166 when additional facts came to light. In response, the undersigned stated, "I'm not worried about – I understand it made a chain, but whoever signed it is responsible for its content as of the date of its signature [sic], and I would like to have that signed by responsible counsel." Transcript of Motions and *Markman* Discovery Hearing, July 1, 2002, at p. 12. To date, however, the document has not been amended to add the signature(s) as requested.

Nichia hereby is ORDERED to cause to be filed in Wilmington before the close of business on **July 26, 2002**, an amended signature page to DE # 166 bearing the original signature of the attorney or attorneys – other than local counsel – who were responsible for the contents of that document pursuant to the provisions of Rule 11, FED. R. CIV. P.

Finally, each party is DIRECTED to deposit, on or before **July 26, 2002**, into the office of the Clerk of Court and additional \$50,000.00 to be applied to the Technical Advisors' compensation fund.

SO ORDERED.

This the 18<sup>th</sup> day of July, 2002.

  
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JAMES C. FOX  
Senior United States District Judge